

customers²⁵ -- the marketing of equipment prices to customers will be facilitated and the number of different Forms 1205 that will be generated will be substantially reduced.²⁶

B. Geographic Averaging

TCI strongly agrees with the Commission's proposal that cable operators should be allowed to geographically average the costs of equipment used by basic-only customers.²⁷ Such aggregation does not contravene Congress's concern that basic-only customers not subsidize the costs of more sophisticated equipment used by non-basic-only customers. Indeed, on many occasions prior to the 1996 Act, the Commission had allowed cable operators to geographically average equipment costs, including costs for equipment used by basic-only customers.²⁸ In the 1996 Act, Congress did nothing to affect these prior arrangements nor

²⁵ This is assuming that the Commission also allows geographic averaging for equipment used by basic-only customers and for the HSC. Each of these issues is discussed below.

²⁶ See also n. 14, supra (citing prior Commission statements regarding the benefits and efficiencies of uniform pricing achieved through averaging).

²⁷ See Notice at ¶ 13.

²⁸ See, e.g., Continental Social Contract Order, 11 F.C.C.R. 299, at ¶¶ 30-32; Time Warner Social Contract Order, FCC 95-478, at ¶¶ 40-41 (released November 30, 1995); 47 C.F.R. § 76.924(c) (allowing geographic averaging at the level that was used by the cable operator as of April 3, 1993). See also Second Rate Reconsideration Order, 9 F.C.C.R. 4119, ¶¶ 218-221 (1994) (permitting small systems to average their equipment costs at any level, or combination of levels, regardless of the operator's practices as of April 3, 1993).

alter the Commission's authority to continue to allow such geographic averaging.

In addition, allowing geographic averaging for the equipment used by basic-only customers will achieve the same marketing, administrative, and regulatory efficiencies discussed in the previous section. For example, geographic averaging would enable cable operators to create a single geographically averaged rate for a standard box for basic-only customers. This would reduce customer confusion and claims of unfair rate discrimination from community to community, as well as promote the general rate setting objectives of simplicity and uniformity. It would also reduce the accounting and regulatory costs of producing and reviewing multiple filings for equipment rates. As such, it is consistent with the Communications Act²⁹ and with the Commission's policy of trying to limit the adverse side effects of regulation upon consumers, regulatory agencies, and cable operators alike.

Finally, given the fact that most basic-only customers use the same, low-level type equipment, geographic averaging will produce only modest price fluctuations for the equipment used by these customers. Going forward, it will stabilize equipment

²⁹ See Communications Act §§ 623(b)(2)(A) (Commission shall "seek to reduce the administrative burdens on customers, cable operators, franchising authorities, and the Commission"); 601(6) (Congress's policy is to "promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems").

pricing for basic-only customers as costs are spread evenly across a larger base, as well as eliminate large increases in consumer rates caused by the introduction of new equipment into the cable system.³⁰

V. MISCELLANEOUS

A. The Commission Should Clarify that LFAs Cannot Use an Operator's Election to Average Equipment Costs as a Vehicle to Re-Open the Unbundling Done in FCC Form 393 of FCC Form 1200.

In the past, certain LFAs have argued that changes in TCI policy that occurred after the FCC Form 393 or FCC Form 1200 unbundling process required TCI to re-open the initial unbundling, apply the new policy or methodology retroactively, and carry the new unbundled service and equipment rates forward.

TCI is concerned that LFAs may assert that equipment averaging requires a re-opening of the FCC Form 393 or FCC Form 1200 unbundling process and a recalibration of service and equipment rates based on an equipment averaging methodology. If cable operators that implement equipment averaging are subject to additional unbundling challenges by LFAs as well as potentially protracted review and appeal procedures, Congress's goal of streamlining the deployment of new technology will be significantly impaired.

³⁰ See Time Warner Social Contract Order at ¶ 40.

The Commission has previously recognized the benefits of establishing regulatory closure with respect to past rate levels. For example, it recently eliminated the policy of reviewing a cable operator's entire CPST rate structure, rather than simply the CPST rate increase, upon the filing of a complaint. The Commission stated that the continuing regulatory ability to review past rate levels "creates an uncertain business environment for cable operators [and] may generally discourage investment, without which operators may lack the resources to upgrade their networks, add new programming services, and provide new innovative services."³¹

The same reasoning that led the Commission to eliminate this "all rates in play" rule applies with equal force in this context. Accordingly, TCI respectfully requests that the Commission rule that LFAs may not require cable operators to re-open the unbundling done in FCC Form 393/1200 as a result of the operator's implementation of the equipment averaging methodology.

B. A Cable Operator Should Not Be Required to "Justify that its Averaging Methodology Produces Reasonable Equipment Rates."

TCI requests that the Commission delete the last part of proposed rule 47 C.F.R. § 76.923(c)(1) which requires that cable operators provide a justification that its averaging methodology produces reasonable equipment rates. At most, a cable operator

³¹ See Thirteenth Order on Reconsideration, 11 F.C.C.R. 388, at ¶ 163 (1995).

should be required to explain its averaging methodology and attest that it has followed the Commission's equipment averaging rules. This would conform the rule to current law and practice.

C. Cable Operators Should Be Permitted to Include Equipment Used With Additional Outlets in the Same Broad Category as Equipment Used With Initial Connections.

TCI is unclear as to the meaning of the Notice's tentative conclusion that "additional connections may not be aggregated with initial connections into a broad category."³² This confusion stems from the fact that under the Commission's existing rules, the charges for initial connections and additional connections are already derived largely from the same pool of costs: 1) the operator's equipment basket includes the costs for installations of both initial and additional connections;³³ and 2) the same hourly service charge ("HSC") is used to calculate the installation rate for both initial connections and additional connections.³⁴

In any event, it is clear that the mere fact that additional outlets are separately listed in section 623(b)(3)(B) of the Communications Act does not limit the cable operator's right to incorporate any equipment used in conjunction with additional

³² See Notice at ¶ 10.

³³ See 47 C.F.R. § 76.923(c).

³⁴ See 47 C.F.R. §§ 76.923(e), (g).

outlets into a broad category that includes equipment used in conjunction with initial cable connections.

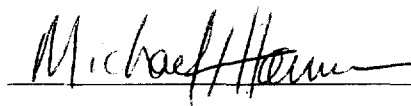
The only limitation on categorical averaging contained in Section 301(j) relates to equipment used by basic-only customers. Aside from this narrow exception, the cable operator is permitted to average costs for all other equipment into broad categories, including any equipment used with additional outlets. TCI requests that the Commission clarify this point in its final order.

CONCLUSION

Based on the foregoing, TCI respectfully requests that the Commission adopt flexible equipment averaging rules consistent with the comments herein.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read "Michael H. Hammer", is written over a horizontal line.

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